REMARKS

This Application has been carefully reviewed in light of the Final Action mailed January 10, 2006. In order to advance prosecution of the present Application, Claims 1, 13, 22, 25, 27, 44, and 45 have been amended. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1-13, 22-27, 29, 31, and 32 stand rejected under 35 U.S.C. §102(e) as being anticipated by Steinberg, et al. Independent Claims 1, 13, 22, 25, 27, 44 and 45 recite in general the ability to determine whether access to a high speed network connection is available, establish a communication link over the high speed network connection in response to access being available to the high speed network connection, and establish a communication link over a dialup network connection with the service provider in response to access not being available to the high speed network connection. By contrast, the Steinberg, et al. patent does not disclose a capability to use a dialup network connection when access to a high speed network connection is not available as required by the claimed invention. Support for the above recitation can be found at page 7, lines 20-29, of Applicant's specification. Therefore, Applicant respectfully submits that Claims 1-13, 22-27, 29, 31, and 32 are not anticipated by the Steinberg, et al. patent.

Claims 14-16 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Steinberg, et al. in view of Wasula, et al. Independent Claim 13, from which Claims 14-16 and 18 depend, has been shown above to be patentably distinct from the Safai patent. Moreover, the Wasula, et al. patent does not include any additional disclosure combinable with the Safai patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits

that Claims 14-16 and 18 are patentably distinct from the proposed Steinberg, et al. - Wasula, et al. combination.

Claims 17, 19, 20, 28, 30, 31, and 34-43 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Steinberg, et al. in view of Safai. Independent Claim 13, from which Claims 17, 19, and 20 depend, and Independent Claim 27, from which Claims 28, 30, 31, and 34-43 depend, have been shown above to be patentably distinct from the Steinberg, et al. patent. Moreover, the Safai patent does not include any additional disclosure combinable with the Steinberg, et al. patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claims 17, 19, 20, 28, 30, 31, and 34-43 are patentably distinct from the proposed Steinberg, et al. - Safai combination.

Claim 21 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Steinberg, et al. in view of Paz-Pujalt, et al. Independent Claim 13, from which Claim 21 depends, has been shown above to be patentably distinct from the Steinberg, et al. patent. Moreover, the Paz-Pujalt, et al. patent does not include any additional disclosure combinable with the Steinberg, et al. patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claim 21 is patentably distinct from the proposed Steinberg, et al. - Paz-Pujalt, et al. combination.

Claims 44 and 45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Safai in view of Steinberg, et al. Independent Claims 44 and 45 recite in general an ability to determine whether access to a high speed network connection is available, establish a communication link over the high speed network connection with a service provider in response to access being available to the high speed network connection, and establish a communication link over a dialup network connection with the service provider in response to access not being available to the high speed network connection. By contrast, the Steinberg, et al. and Safai patents do not disclose a capability to use a dialup network connection when access to a high speed network connection is not available as required by the claimed invention. Support for the above recitation can be found at page 7, lines 20-29, of Applicant's specification. Therefore, Applicant respectfully submits that Claims 44 and 45 are patentably distinct from the proposed Safai - Steinberg, et al. combination.

This Response to Examiner's Final Action is necessary to address the new grounds of rejection and newly cited art asserted by the Examiner. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now asserted the new grounds of rejection and the newly cited art in support thereof.

Applicant respectfully requests withdrawal of the finality of the present Office Action. "Before final rejection is in order a clear issue should be developed between the examiner and applicant." M.P.E.P. §706.07. A clear issue has not been developed between the Examiner and Applicant with respect to the Steinberg, et al. patent as the Examiner has only now used the Steinberg, et al. patent to support a rejection of these claims. According to M.P.E.P. §706.07, hasty and ill-considered final rejections are not

sanctioned. "The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application." M.P.E.P. §706.07. "To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied; and in reply to this action the applicant should amend with a view to avoiding all the grounds of rejection and objection." M.P.E.P. §706.07.

Applicant responded to the Office Action of July 13, 2005 and overcame the Safai patent used by the Examiner to reject these claims. Now, the Examiner comes back with the Steinberg, et al. patent which the Examiner did not use as a basis for any rejection of these claims in the previous Office Action. The Examiner now uses the Steinberg, et al. patent in the same manner as the Safai patent was used in the previous Office Action. Thus, the Examiner has not followed the M.P.E.P. where it states that "[s}witching from . . . one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination, i.e., either an allowance or a final rejection." Amendments to the claims in response to the previous Office Action did not substantially change the subject matter of the claims to force the Examiner to now use the Steinberg, et al. patent in support of the claim rejections. The Steinberg, et al. patent was available for use by the Examiner in the previous Office Action to support a rejection of the claims.

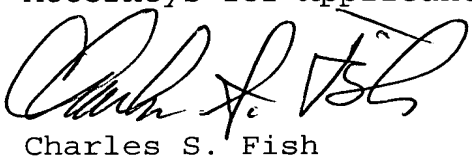
As a result, Applicant has not been given the cooperation of the Examiner as required and has been denied an opportunity to fully address the Steinberg, et al. patent and associated new grounds of rejection. By not providing Applicant the capability to fully respond to the Steinberg, et al. patent without the assurance that the response would be considered and entered, the Examiner has prematurely cut off prosecution of the present Application. Applicant has not been given a full and fair hearing to which it is entitled and a clear issue has not been developed as required. Therefore, Applicant respectfully submits that the final rejection is premature and that the finality of the present Office Action be withdrawn.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicants



Charles S. Fish
Reg. No. 35,870

March 10, 2006

CORRESPONDENCE ADDRESS:
2001 Ross Avenue, Suite 600
Dallas, TX 75201-2980
(214) 953-6507
Customer Number: 05073